

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
GREENVILLE DIVISION**

IN RE:

**CAH ACQUISITION COMPANY 12, LLC,)
dba FAIRFAX COMMUNITY HOSPITAL,)**

Debtor.

Case No. 19-01697-5-JNC

Chapter 11

**RESPONSE OF THE UNITED STATES TO TRUSTEE’S AMENDED
MOTION PURSUANT TO 11 U.S.C. §§ 363 AND 105(a) AND FEDERAL
RULE OF BANKRUPTCY PROCEDURE 9019(a) FOR APPROVAL OF
CONSENT ORDER AND STIPULATION BY AND BETWEEN THE
TRUSTEE AND RURAL WELLNESS FAIRFAX, INC. RESOLVING MOTION
SEEKING (I) AN ORDER CONFIRMING THAT (A) CERTAIN STIMULUS
FUNDS WERE USED IN ACCORDANCE WITH APPLICABLE TERMS AND
CONDITIONS AND (B) TRUSTEE MAY TRANSFER ANY REMAINING
STIMULUS FUNDS TO PURCHASERS;
AND (II) AN ORDER ELIMINATING ANY LIABILITY OF TRUSTEE
AND DEBTORS’ ESTATES FOR USE OF STIMULUS FUNDS**

The United States Department of Health and Human Services (“DHHS”), by and through the United States Attorney, respectfully submits this response to the Trustee’s Amended Motion (Amended Motion) for approval of a Consent Order and Stipulation (“Consent Order”), by and between the Trustee and certain purchasers of Debtors’ assets, Fairfax Community Hospital (“Fairfax”) (Case No. 19-01697-5-JNC). The Trustee requests entry of an amended Consent Order for the purpose of resolving, in part, Trustee’s “Motion Seeking (I) an Order Confirming that (A) Certain Stimulus Funds Were Used in Accordance with Applicable Terms and Conditions and (B) Trustee May Transfer Any Remaining Stimulus Funds to Purchasers; and (II) an

Order Eliminating Any Liability of Trustee and Debtors' Estates for Use of Stimulus Funds ("Original Motion"). The DHHS, having reviewed the facts pertaining to the asset sales under which title changed from the respective Debtor to the corresponding purchaser, responds to the Trustee's Amended Motion as follows.¹

The Amended Motion appears to be a good faith attempt to bring the Debtor and the purchaser, Affinity Health Partners, LLC ("Affinity"), closer toward compliance with the terms and conditions imposed by DHHS nationwide on all recipients of payments made from Provider Relief Fund ("PRF"). The Amended Motion would appear to have Trustee attest for all funds it receives and be responsible for reporting and other compliance tasks for all PRF payments it received for the Debtor. An agreement between the Debtor and Affinity would provide for cooperation between them in terms of DHHS regulatory compliance, reporting, and program administration. Each party, in effect, would agree to be bound by DHHS's terms and conditions governing the use of PRF funds they keep.²

Unfortunately, those terms and conditions under which the Trustee and Debtor would be attesting for all PRF payments they received do not allow transfer

¹ The United States incorporates by reference its previous briefing on this matter [D.E. 567 & 611].

² As noted in previous filings, Congress entrusted the administration of the PRF to the Secretary of DHHS (Secretary) and directed the Secretary to implement the "most efficient payment systems practicable to provide emergency payment." DHHS thus implemented the legislation expeditiously in response to the public health crisis. DHHS made initial payments from the General Distribution based upon the most recent information available to DHHS. The terms and conditions imposed on attesting parties are published by DHHS on its website, at www.hhs.gov/coronavirus/cares-act-provider-relief-fund/index.html). It includes detailed responses to Frequently Asked Questions ("FAQs"). DHHS has continued to add to and modify these materials, on an ongoing basis.

of funds to a third party. Thus, in this respect, the Amended Motion, if adopted, will result in a violation of the PRF terms and conditions.

Conclusion

For the foregoing reasons, the United States cannot consent to the Amended Motion.

Date: July 6, 2020

Respectfully submitted,

ROBERT J. HIGDON, JR.
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CERTIFICATE OF SERVICE

I do hereby certify that I have this 6th day of July 2020, served a copy of the foregoing upon the below-listed parties electronically as follows:

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